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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/110,720	07/07/98	BILLING-MEDEL	P 6130.US.P1

HM12/0203

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EXAMINER

STUCKER, J

ART UNIT

1648

PAPER NUMBER

5

DATE MAILED: 02/03/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/106,720

Applicant(s)
Billing-Medel et al.

Examiner
Jeffrey Stucker

Group Art Unit
1648



☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-44 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-44 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

I. Claims 1-10, 35, and 40-42, drawn to methods of detecting nucleic acid sequences, classified in Class 435, subclass 6.

II. Claims 11-14, 33, 34, 38, and 39, drawn to purified nucleic acid sequences, classified in Class 536, subclass 23.1.

III. Claims 15, 16, and 30, drawn to recombinant expression system and transfected cells, classified in Class 435, subclass 325.

IV. Claims 17-19, 21, 22, and 36, drawn to a polypeptide and a kit containing the polypeptide, classified in Class 530, subclass 350.

V. Claims 20, 23, 24, and 37, drawn to an antibody and a kit containing the antibody, classified in Class 530, subclass 387.1.

VI. Claim 25, drawn to a method of producing a peptide, classified in Class 435, subclass 325.

VII. Claims 26, 27, and 43, drawn to a method for detecting a polypeptide, classified in Class 435, subclass 7.1.

VIII. Claims 28, 29, and 44, drawn to a method for detecting an antibody, classified in Class 435, subclass 7.1.

IX. Claim 31, drawn to a first method of producing an antibody, classified in Class 424, subclass 277.1.

X. Claim 32, drawn to a second method of producing an antibody, classified in Class 435, subclass 344.

The inventions are distinct, each from the other because of the following reasons:

The invention of Groups I, VI, VII, VIII, IX, and X are directed to methods and Groups II, III, IV, and V are directed to compositions which are patentably distinct.

Each of the method groups is distinct from the other because the methods each have different starting materials, reagents, and expected outcomes, e.g., methods of detecting and methods of producing.

Each of the composition groups is directed to different compositions that have different chemical structures and different physiological characteristics and are produced differently.

Because these inventions are distinct for the reasons given above and have acquired separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention: each of SEQ ID NOs 1-16 and 31-35.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or

admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Papers related this application may be submitted to Group 1648 by facsimile transmission. Papers should be faxed to Group 1648 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG (November 15, 1989).

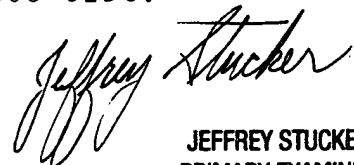
The Group 1648 Fax numbers are: (703) 308-4242 and (703) 305-3014.

Unofficial communications may be faxed to: (703) 308-4426.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Stucker whose telephone number is (703) 308-4237. The examiner can normally be reached Monday to Thursday from 7:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Eisenschenk, Ph.D., can be reached on (703) 308-0452.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.



JEFFREY STUCKER
PRIMARY EXAMINER